

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTSFILED
Clerk's Office
USDC, Mass.
Date 8/12/05
By [Signature]
Deputy Clerk

STEVEN B. BELKIN,

Plaintiff,

v.

Civil Action No.

BRUCE LEVENSON,

ED PESKOWITZ,

J. MICHAEL GEARON, JR.,

J. RUTHERFORD SEYDEL II,

LPF ATLANTA LLC, and

SSG GROUP, LLC,

Defendants.

05 - 11695 RCLMAGISTRATE JUDGE SookinRECEIPT # 16300
AMOUNT \$ 250
SUMMONS ISSUED N/A
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. TOM
DATE 8/16/05**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1441, Defendants Bruce Levenson, Ed Peskowitz, J. Michael Gearon, Jr., J. Rutherford Seydel II, LPF Atlanta LLC, and SSG Group, LLC. (collectively, "Defendants") hereby remove the state court action entitled *Belkin v. Levenson, et al.*, Civil Action No. 05-3287 (BLS), filed in the Superior Court of Suffolk County, Massachusetts on August 4, 2005. Defendants were served on August 5, 2005. Thus, this Notice of Removal is being timely filed within thirty days of service, as required by 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Defendants is filed with this notice at Tab A. In support of removal, Defendants state as follows:

GROUND FOR REMOVAL

Federal jurisdiction exists over this removed action pursuant to 28 U.S.C. § 1441 because this action could originally have been filed in this Court pursuant to 28 U.S.C. § 1332. Diversity

jurisdiction exists over this action because the Plaintiff has complete diversity with each Defendant and the amount in controversy exceeds the sum of \$75,000.

DIVERSITY JURISDICTION

COMPLETE DIVERSITY

1. Plaintiff Steven Belkin is a citizen of Massachusetts. *See* Compl. ¶ 2.
2. Defendant Bruce Levenson is a citizen of Maryland. *See* Compl. ¶ 3.
3. Defendant Ed Peskowitz is a citizen of Maryland. *See* Compl. ¶ 4.
4. Defendant J. Michael Gearon, Jr. is a citizen of Georgia. *See* Compl. ¶ 5.
5. Defendant Rutherford Seydel II is a citizen of Georgia. *See* Compl. ¶ 6.
6. Defendant LPF Atlanta LLC is a limited liability company. *See* Compl. ¶ 7. A

limited liability company is a citizen of every state in which any of its members is a citizen.¹ LPF Atlanta LLC's members are Levenson, Peskowitz and Forman. All three members are citizens of Maryland.

7. Defendant SSG Group, LLC is a limited liability company. *See* Compl. ¶ 7. A limited liability company is a citizen of every state in which any of its members is a citizen.² SSG Group, LLC's members are Beau Turner Sports LLC, Gearon Sports LLC, Sereteen Sports LLC and Seydel Sports Group LLC. The member of Beau Turner Sports LLC is Reed Beauregard Turner who is a citizen of Georgia. The members of Gearon Sports LLC are Michael Gearon Sr., and Michael Gearon Jr. Both members are citizens of Georgia. The

¹ *See JMTR Enterprises, LLC v. Duchin*, 42 F. Supp. 2d 87, 94 (D. Mass. 1999) (limited liability companies "are taken to be citizens of the state or states of which their members are citizens."). *See also Ketterson v. Wolf*, 2001 WL 940909, at *3 (D. Del. Aug. 14, 2001) ("[A] limited liability company is a citizen of the states of which its individual members are citizens."); LPF Atlanta LLC is a citizen of . *See* 28 U.S.C. § 1332(c)(1).

² *See JMTR Enterprises, LLC v. Duchin*, 42 F. Supp. 2d 87, 94 (D. Mass. 1999) (limited liability companies "are taken to be citizens of the state or states of which their members are citizens."). *See also Ketterson v. Wolf*, 2001 WL 940909, at *3 (D. Del. Aug. 14, 2001) ("[A] limited liability company is a citizen of the states of which its individual members are citizens."); LPF Atlanta LLC is a citizen of . *See* 28 U.S.C. § 1332(c)(1).

member of Seretean Sports LLC is M.B. Seretean who is a citizen of Georgia. The member of Seydel Sports Group LLC is Rutherford Seydel II who is a citizen of Georgia.

8. Because Plaintiff is a citizen of Massachusetts and none of the Defendants are citizens of Massachusetts, the diversity requirement of 28 U.S.C. § 1332(a) is clearly met.

AMOUNT IN CONTROVERSY

9. Plaintiff's verified complaint seeks injunctive relief, and has contended that his potential harm exceeds \$75,000 and he has placed an amount in controversy far greater than the \$75,000 required for diversity jurisdiction purposes under 28 U.S.C. § 1332(a).

10. Concurrent with the filing of this Notice of Removal, Defendants are giving written notice of this Notice of Removal to the Superior Court of Suffolk County, Massachusetts.

Respectfully Submitted,

BRUCE LEVENSON,
ED PESKOWITZ,
J. MICHAEL GEARON, JR.,
J. RUTHERFORD SEYDEL II,
LPF ATLANTA LLC, and
SSG GROUP, LLC

By their Attorneys,



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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Belkin v. Levenson
-
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
-
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (if yes, submit a separate sheet identifying the motions)
YES ☒ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas C. FrongilloADDRESS Weil, Gotshal & Manges LLP, 100 Federal Street, Boston, MA 02110TELEPHONE NO. (617) 772-8300

Pursuant to Question 8, the motion pending in the state court is the Defendants' Emergency Motion to Compel Arbitration and to Stay Court Proceedings Pending Arbitration.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Steven B. Belkin

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) John G. Fabiano
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street, Boston, MA 02109

DEFENDANTS

Bruce Levenson

County of Residence of First Listed Defendant Maryland
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) Thomas C. Frongillo
Weil, Gotshal & Manges LLP
100 Federal Street, Boston, MA 02110

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

Brief description of cause: injunctive relief

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** preliminary injunction **CHECK YES only if demanded in complaint:** **JURY DEMAND:** ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

8/15/05

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____